

AMANDA MINING & MANUFACTURING ASSOCIATION

IBLA 79-346

Decided August 16, 1979

Appeal from decision of the California State Office, Bureau of Land Management, declaring the Amanda No. 8 and Golden Delight placer mining claims abandoned and void. CA MC 256, CA MC 2405.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Abandonment

Under 43 CFR 3833.2-1, the owner of two unpatented mining claims, one located Sept. 16, 1976, and recorded with BLM May 3, 1977, and one located Feb. 1, 1977, and recorded with BLM Feb. 17, 1977, must have filed affidavits of assessment work or notices of intention to hold the mining claims for both claims prior to Dec. 31 of the calendar year, 1978, to prevent the claims from being conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

2. Administrative Procedure: Adjudication – Appeals: Generally – Evidence: Sufficiency – Mining Claims: Abandonment

Where, on appeal, a mining claimant alleges that he timely mailed the affidavits of assessment work to the proper BLM office but there is no evidence to indicate they were ever received, the claimant must bear the consequences of the loss and his inability to prove his allegation that they may have been received by the Bureau and subsequently lost.

APPEARANCES: Russ Gamlin, Secretary-Treasurer, Amanda Mining & Manufacturing Association, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Amanda Mining & Manufacturing Association has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 16, 1969, which declared the Golden Delight and the Amanda No. 8 placer mining claims abandoned and void. The Golden Delight claim was located September 16, 1976, and recorded with BLM on May 3, 1977, and the Amanda No. 8 was located February 1, 1977, and recorded with BLM on February 17, 1977, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). BLM found that appellant had failed to file affidavits of assessment work performed in 1978 prior to December 31, 1978, as required by 43 CFR 3833.2-1.

The records in each case contain copies of "proof of labor upon mining claim" for the two claims which were filed with the Trinity County Recorder's office on September 14, 1978. Appellant states that he in fact filed these same notices with BLM by mail posted November 6, 1978, but that apparently they either were not received or were misplaced in the BLM office. He states, "After learning later that BLM did not seem to receive letters that were not certified, I, on February 20, 1979, sent another certified letter including copies of said assessment work." These are the same copies in the files date stamped February 22, 1979.

[1] 43 U.S.C. § 1744(a) sets forth the requirements of section 314 of FLPMA as to recordation of unpatented mining claims and the filing of information concerning annual assessment work or a notice of intention to hold claims as follows:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection:

Failure to timely file the required instruments with BLM is deemed conclusively to constitute an abandonment of the mining claim pursuant to 43 U.S.C. § 1744(c) (1976) and the regulations in 43 CFR 3833.4(a).

As for the unpatented Golden Delight placer claim located September 16, 1976, the applicable regulation, 43 CFR 3833.2-1(a)(1) requires the owner to file before October 22, 1979, and prior to December 31 of each calendar year of recording, in the proper BLM

office, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Although FLPMA allows 3 years until 1979 for filing for claims located before October 21, 1976, where the owner has recorded his claim with BLM, 43 CFR 3833.2-1 (a)(1) specifically requires an assessment notice or a notice of intention to hold to be filed in the year following the year of recording. In this case the Golden Delight was recorded with BLM May 3, 1977. Accordingly, appellant should have filed the required notice no later than December 31, 1978. When the document was not received until well after that date, the claim was properly deemed conclusively to have been abandoned. Charles and Peter Carress, 41 IBLA 302 (1979).

As for the Amanda No. 8 located February 1, 1977, the same result follows. The cited provisions of FLPMA and the regulations in 43 CFR 3833.2-1(b)(1) similarly require that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Appellant should have also filed his required notice for this claim prior to December 31, 1978. Since he failed to make a timely filing BLM properly declared the claim to have been abandoned and void. Blackburn Enterprises, 41 IBLA 115 (1979); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Camuthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978).

[2] Appellant's mere assertion that he submitted timely notices that were lost in the mail or misplaced by BLM is insufficient to excuse his failure to comply with a mandatory requirement of the law and the regulation. There is no evidence of record to show that those earlier notices were ever received by BLM. If he did, in fact, mail these notices in sufficient time to meet the required deadline, and those notices were subsequently lost, he selected the means of noncertified mail, without proof of a timely filing, and must bear the consequences of the nondelivery. Mobile Oil Corp., 35 IBLA 265 (1978), and cases cited therein. In order to support his conjecture that they were timely received in the proper BLM office where they were subsequently lost, some probative evidence of timely delivery would be required. Mere speculation will not suffice. Vern H. Bolinder, 30 IBLA 26 (1977). Although appellant has offered to produce witnesses to attest to the mailing of the documents, such witness could not provide evidence of their timely receipt, and appellant, having chosen the means of delivery, must accept responsibility for nondelivery. See Donald E. Jordan (Supp.), 41 IBLA 60 (1979). Filing is

accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2(f).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

